FILED

MAR 3 1981

RICHARD H. DEANE
CLERK, US COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD G. BOAG, Plaintiff-Appellant, vs. ELLIS MacDOUGALL, Director, Arizona Department of Corrections, Defendant-Appellee.	No. 80-5283 DC 80-224-PHX-WPC MEMORANDUM

Appeal from the United States District Court
for the District of Arizona

William P. Copple, District Judge, Presiding

Submitted: February 12, 1981

Before: SNEED and KENNEDY, Circuit Judges, and HEMPHILL,* District Judge.

Donald G. Boag, a state prisoner, brought a civil rights action under 42 U.S.C. § 1983 challenging the conditions of confinement of a prison from which he had been transferred. Ruling on a motion to proceed in forma pauperis, the lower court summarily dismissed the complaint. We affirm.

A civil rights complaint brought by a state prisoner proceeding in forma pauperis may be dismissed summarily by the district court pursuant to 28 U.S.C. § 1915(d) when the complaint is frivolous. Milton v. Nelson, 527 F.2d 1158, 1160 (9th Cir. 1975); Boag v. Boies, 455 F.2d 467, 468 (9th Cir.) (per curiam), cert. denied, 408 U.S. 926 (1972). Moreover, the discretion of lower courts in § 1915(d) dismissals is "especially broad" in civil rights actions against prison officials, and such dismissals will not be reversed in the absence of an abuse

*Honorable Robert W. Hemphill, Senior United States District Judge for the District of South Carolina, sitting by designation.

of that discretion. Milton, supra. The lower court did not abuse its discretion in this case, for the complaint fails to state causes of action upon which relief can be granted and is therefore frivolous.

AFFIRMED.

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FILED

MAR 25 1980

W. J. FURSTENAU, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

DONALD G. BOAG, Plaintiff, vs. ELLIS MacDOUGALL, Director, Arizona Department of Corrections, et al., Defendants.	No. Civ. 80-224 Phx. WPC O R D E R

Plaintiff, an Arizona State Prison inmate pro per, has lodged a prisoner civil rights complaint together with an affidavit of indigency and request for leave to file and proceed in forma pauperis.

It is apparent from the face of the complaint that the claim is moot.

IT IS ORDERED:

1. Leave to file in forma pauperis is granted; leave to so proceed is denied.

2. The complaint and action are dismissed and the Clerk will enter judgment accordingly.

DATED March 25, 1980.

United States District Judge

FPI-SST-10-79
12500-1226

FILED

UNITED STATES COURT OF APPEALS JUN 2 1981

FOR THE NINTH CIRCUIT

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

DONALD G. BOAG,

Plaintiff-Appellant,

vs.

ELLIS MacDOUGALL, Director, Arizona Department of Corrections,

Defendant-Appellee.

No. 80-5283

ORDER

Before: SNEED and KENNEDY, Circuit Judges, and HEMPHILL,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judges Sneed and Kennedy have voted to reject the suggestion for a rehearing en banc, and Judge Hemphill has recommended rejection of the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

*Honorable Robert W. Hemphill, Senior United States District Judge for the District of South Carolina, sitting by designation.

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SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1980

NO. 80-6845

DONALD GENE BOAG,

Petitioner,

against

ELLIS MACDOUGALL, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS; and, WILLIAM RHODE, SUPERINTENDENT OF ALHAMBRA RECEPTION AND TREATMENT CENTER,

Respondents.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND AFFIDAVIT IN FORMA PAUPERIS

Petitioner, Donald Gene Boag, respectfully moves the court for leave to proceed in forma pauperis with the attached Petition for Writ of Certiorari.

Petitioner is an indigent prison inmate with no funds excepting the menial wages he earns on his prison job, i.e.-chopping weeds on the "gun gang"; he owns no property, no motor vehicles, and has no income thus he cannot pay the various fees/costs in this proceeding or give security therefor. He declares under penalty of perjury that the foregoing is true and correct .

DATED: June 9th 981

Respectfully Submitted,

Donald Gene Boag

Donald Gene Boag